

Californians for Renewable Energy, Inc. (CARE)

821 Lakeknoll Dr.
Sunnyvale, CA 94089
(408) 325-4690

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:
Commission's

) Agenda Item 1B of the

Application for Certification for the
Metcalf Energy Center [Calpine
Corporation and Bechtel Enterprises, Inc.]

) Business meeting of October 11, 2000
) & Docket No. 99-AFC-3
) **Motion for Stay of Pending Proceedings**
) **to authorize additional services under**
) **contract between the CEC and Jones**
) **& Stokes for expert testimony on MEC**

Motion for stay of the pending proceeding to authorize additional services under contract between the CEC and the private consulting firm of Jones & Stokes

CARE demands that, at the very least, the Commission grant a stay of the pending proceeding to authorize additional services under contract between the CEC and the private consulting firm of Jones & Stokes (or any other private consulting firm) for the provision of expert testimony regarding the visual impacts of the MEC project. There are numerous reasons for a stay, or for a denial of the CEC contract with Jones & Stokes.

By communication dated 09/29/00 titled *Information Requests Pursuant CEQA*, we made a request for information under CEQA, which we are entitled to make under CEQA's strong public participation requirements, as well as a request under the California Public Records Act (CPRA), for information regarding CEC contracts with Jones & Stokes or other private consultants for expert testimony regarding the MEC. CARE requested this information under CPRA in its 9/29/00 filing titled *Additional Thoughts, Comments, Demands and the Like Concerning Various Pending Matters, Including Public Records Act Request, Etc.* which states,

"Anticipating the CEC's continued refusal to comply with our requests for additional information or investigation after the so called close of discovery, we hereby submit this written request under the California Public Records Act to allow us to review and copy each and every document in the CEC's possession requested by CARE previously, presently or in the future. We shall expect the appropriate statutory response to this request, but recognizing the uniqueness of the forum, we are willing to work with the CEC in facilitating the location and production of the requested materials."

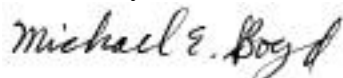
The CPRA requires that the CEC respond to our request within 10 days. Even though more than 10 days have now passed; our CEQA and CPRA requests have been completely ignored. CARE requested this information under CPRA in its 9/29/00 filing titled *Additional Thoughts, Comments, Demands and the Like Concerning Various Pending Matters, Including Public Records Act Request, Etc.* which states,

“Anticipating the CEC’s continued refusal to comply with our requests for additional information or investigation after the so called close of discovery, we hereby submit this written request under the California Public Records Act to allow us to review and copy each and every document in the CEC’s possession requested by CARE previously, presently or in the future. We shall expect the appropriate statutory response to this request, but recognizing the uniqueness of the forum, we are willing to work with the CEC in facilitating the location and production of the requested materials.”

In addition to violating CEQA, what this means under the CPRA is that the CEC has now waived any objections or exemptions to our CPRA request. The CEC must now produce all the information requested, and we are entitled to bring a legal action to enforce the CPRA. We demand that this be done before the CEC commits itself to the expenditure of additional PUBLIC FUNDS for services provided by private consultants with a predominant pro-applicant bias.

We are informed and believe that Jones & Stokes, and possibly other “independent” consultants retained by the CEC to work on the MEC project (not to mention other powerplant projects), have a definite and highly significant bias toward developers, powerplant builders & owners, as well as other project applicants, for whom Jones & Stokes, et al., predominantly do work for. As shown by the communication from our biological resources expert, Dr. Shawn Smallwood, the opinions of consultants like Jones & Stokes are highly questionable because of their definite pro-applicant bias, and there are plenty of other consultants who are far less biased and far more qualified to perform services PAID FOR BY PUBLIC FUNDS.

We object and call upon the Commission to go forward with the information and the investigation of this matter, which we requested and continue, to request. Continuing to deprive CARE and other members of the public of the CEQA and Warren-Alquist rights of public participation by excluding the public from the process of retaining private consultants that are not “independent” in any meaningful sense is grossly unfair, as well as contrary to law, and we demand that the Commission immediately put a stop to it.

A handwritten signature in dark ink, appearing to read "Michael E. Boyd". The signature is written in a cursive, somewhat stylized script.

Michael E. Boyd – President, CARE 10-10-00

Shawn Smallwood, Ph.D.

puma@davis.com

109 Luz Place

Davis, CA 95616

CARE to provide expert testimony and consulting services on biological resources and related matters, in regard to the MEC, has retained me. I have already submitted detailed information about my qualifications and areas of expertise. In my professional opinion, based on my knowledge and experience, the consulting firm of Jones & Stokes primarily does work and has a definite bias toward developers and project applicants. In my opinion, the expert testimony of Jones & Stokes is heavily tainted by their pro-applicant bias, which seriously calls into question the accuracy, validity and even integrity of the conclusions and opinions rendered by Jones & Stokes, and the scientific data and objective information on which those conclusions and opinions are purportedly based. In my professional opinion, there are many other private consulting firms that are far more “independent” and trustworthy than Jones & Stokes, and I seriously frown upon the use of public funds to retain pro-applicant consultants.

10-10-00

Shawn Smallwood, Ph.D.

Date